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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,075	01/14/2004	Gaston Glock	42278/295445	5347
23370	7590	06/09/2005	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,075

Applicant(s)

GLOCK, GASTON

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 1,3 and 5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14 FEB 05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claims 1, 3 and 5 are objected to because of the following informalities: claims 1, 3 and 5, the use of pronouns and possessive pronouns, e.g., “it”, “its”, “whose”, should be avoided as that use can create ambiguity within the scope of the claims. Further, line 10, “purely” is objected to as it would appear to intend, and examiner suggests replacing with, “--solely-- or --only--”, for example. Appropriate correction is strenuously encouraged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the drive rod (8) being formed on both ends with a polygonal-spherical shape, does not reasonably provide enablement for only one end of the rod (8) or the other to be so formed. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to fabricate the invention commensurate in scope with these claims. It would appear that Applicant has unintentionally included the “and/or” statement of line 4 of the claim. Examiner recommends removing the “/or” portion of this recitation.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1 – 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Regarding claim 1, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Further, claim 1 recites the limitations "the locking mechanism" in line 3, "whose cylinder lock" in line 4, "the path" in lines 6 and 7 (1 in each), and "the magazine shaft" in line 8. There is insufficient antecedent basis for these limitations in the claim.

Further still, claim 1, line 2, the recitations "this mechanism" and line 7, "this part" should be clarified, such as, --said trigger mechanism--, as best understood, and --said part--.

Even further still, it has been held that the recitation that an element is "capable of" performing a function (see "can be turned", at line 4) is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

And even still further, the preamble is directed to a "locking device", per se, whereas the body of the claim brings in details of a pistol. Hence, it is unclear if the claim is actually intended to be directed to the locking device, per se, or, to the combination thereof and a pistol. At present there is no proper antecedent basis for such terms as "trigger", "trigger mechanism", "firing pin", "hammer", etc., as these are components of a pistol, per se. Such could be corrected by changing the claim preamble to something more apt, such as, --In a pistol having a trigger, a trigger mechanism, a firing pin...and a locking device, said locking device comprising...--.

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7. Claim 2 recites the limitations "the path" in line 2, "the angular position" in line 3, and "the locking shaft" in lines 3 and 4. There is insufficient antecedent basis for these limitations in the claim. The rejection of the recitation of "the path" would be alleviated upon correction of claim 1 above.

Further, claim 2 would appear to be less ambiguous, were it rewritten to more positively recite the cam region extending into the path of motion of part (20). Examiner suggests removing "or" and rewriting to overcome alternative usage, e.g., "which extends into the path...in a first position and is removed from the path...in a second position" or some such.

8. Re – claims 3 and 6, it has been held that the recitation that an element is "capable of" performing a function (see "can rotate", at line 2 of each) is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

9. Claim 5 recites the limitation "the adjacent part" in line 4. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 6 recites the limitations "the locking shaft" in line 2 and "the handle piece" in line 3. There is insufficient antecedent basis for these limitations in the claim.

11. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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13. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,510,639 to McMoore.

14. Re – claim 1, McMoore discloses the claimed invention including a locking device for a pistol 110 with a trigger 118, a trigger mechanism 130, and a firing pin or hammer**, actuated by the trigger mechanism 130, wherein a locking mechanism 136, has a cylinder lock 138, arranged in the handle 114, the cylinder lock 138 including a locking cylinder**, turned with a key**, and wherein a transfer mechanism 140 brings a locking element 142 from a position in which the element 142 is located outside a path of motion of a part 130, for example, of the trigger mechanism 130 into a position in which the element 142 extends into the path of said motion characterized in that the locking element 142 and the transfer mechanism 140 execute only rotational movements.

**Regarding a firing pin or hammer, and a locking cylinder turned with a key, absent any evidence to the contrary, examiner contends that these items are inherent, implicit, or at least well known, within those elements as claimed. At Applicant's request, examiner will supply evidence of such.

15. Re – claim 2, McMoore further discloses a cam region, perhaps best seen in Fig. 13 and 14, for example.

16. Re – claim 6, McMoore further discloses the locking element 142 being supported in the handle 114, as seen in Figs. 13 and 15, for example, so that it rotates within the handle 114.

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Allowable Subject Matter

17. Claims 3 – 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

18. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record discloses the invention substantially as claimed, as set forth above, except that the prior art neither discloses nor fairly teaches the claimed combination including a sheath freely rotatable about a drive rod and extending over a significant part of an axial length of the drive rod arranged behind a magazine well in a handle of a pistol.

19. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).


Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571) 272 – 7045. The fax number is (703) 872 – 9306.

bh

27ay-05



**HARVEY BEHREND
PRIMARY EXAMINER**